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VIA E-MAIL

Massachusetts Division of Energy Resources
The Commonwealth of Massachusetts
70 Franklin Street, 7th Floor
Boston, Massachusetts 02110-1313

RE: Notice of Inquiry Regarding Some Proposed Revisions of the Regulations Pertaining to the Definition of "Low-Emission, Advanced Biomass Power Conversion Technologies" ("NOI").

Dear Sir:

Cape Wind Associates, LLC ("Cape Wind") offers comments to the above referenced NOI. Cape Wind is being developed in response to the statutory requirement that, beginning in 2003, one percent (1%) of retail electricity sold to Massachusetts end-use customers by a retail electricity supplier shall be supplied from a new renewable resource. EMI, Cape Wind's affiliate, is a New England based company with 28 years of experience in energy conservation and energy development. EMI has successfully developed six natural gas fired electric generation projects in New England that represent the most environmentally superior facilities in the region. Cape Wind is an offshore wind park on Horseshoe Shoal, five miles off the Cape Cod shore in Massachusetts. The wind park will consist of 130 wind turbines, with a total maximum output of 420 megawatts. In average conditions the wind park will produce 170 megawatts of renewable energy. EMI actively participated in the RPS rule making process and feels very strongly that the proposal is contrary to the legislation and current regulations.

1. **The Proposed Guidelines violate both the Electric Restructuring Act and the DOER's RPS Regulations**

The Electric Restructuring Act makes a clear distinction between new and existing renewable generating sources and has set forth a clear requirement for the development of new renewable generating sources that is significantly narrower than that which is proposed by the DOER's proposed revisions. M.G.L.c. 25A § 11F(a) provides in part:

> By December 31, 1999, the division shall determine the actual percentage of kilowatt-hours sales to end-use customers in the commonwealth which is derived from **existing** renewable energy generating sources. Every retail

> supplier shall provide a minimum percentage of kilowatt-hours sales to end-use customers in the commonwealth from **new** renewable energy generating sources.

Likewise, the RPS standards set forth limitations on the eligibility for a generation unit to qualify as a New Renewable Generation Unit that specifies a date certain upon which generators must achieve a Commercial Operation Date. 225 CMR 14.05 (1)(b) states:

> The Commercial Operation Date **shall be** after December 31, 1997 …

Both the Electric Restructuring Act and the DOER's RPS Regulations are thus narrowly tailored to achieve the Legislature's intent of developing new renewable energy sources. The proposed revisions circumvent the Legislature's specific intent of developing new renewable energy generating sources by making generating sources with a Commercial Operation date prior to December 31, 1997, eligible for RPS compliance. The Proposed Guidelines cannot be reconciled with the Legislative intent to provide incentives for investment in new facilities. [1]

Furthermore, weakening the biomass technology standard clearly runs counter to the guidance the DOER received from Legislative leaders in a March 2002 letter from the House and Senate Energy Chairs that stated:

> …pile burn and stoker technologies, which have been in use for decades and would not be considered advanced under any reasonable definition of the term.

This is thus a case where the legislative intent could not be more clear; the legislature expressly directed that stoker technology is simply not "advanced", irrespective of variances in its heat rate or emissions factors.

Similar issues were considered in detail five years ago in the DOER-contracted RPS White Paper #5 on Eligibility:

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[1] The department should also take note of corresponding provisions in the pending Senate Energy Bill which expressly provide that renewable incentives and requirements are to include only the incremental portion of generation associated with the retrofitting of a biomass, landfill gas or trash combustion facility. See, Senate Energy Bill at §1501(e) (PTC incentive for trash combustion facilities applies "only to the extent of the increased amount of electricity produced at the facility by reason of such new unit"); §609(i)(7) ("the term 'new renewable energy' means - … for electric energy generated at a facility (including a distributed generation facility) placed in service prior to the date of enactment of this section – (i) the additional energy above the average generation in the three years proceeding the date of enactment of this section at the facility from - … biomass (as defined in Section 203(a) of the Energy Policy Act of 2005); [or] landfill gas ….").

> From a policy perspective, we believe allowing all such [existing biomass] generation to qualify as new would be inconsistent with the intent of the Act and with DOER's RPS Design Principles. It would not be credible to allow a mere emission retrofit to qualify all output as new, as such a situation would not provide the same benefit as other new renewables (e.g. no incremental biomass generation, no displacement of non-renewables – from perspective of conventional definition – only minor emission improvement). In addition, allowing all of the generation from a retrofitted biomass plant to be eligible as *new* can create a very unstable market for all other new renewables. Large quantities of energy could quickly become available without a (relatively speaking) sizable investment, destabilizing the market for other clearly eligible new renewable generation. The result would be increased financing uncertainty, which would impede the ability of other types of clearly eligible new renewables to attract financing on favorable terms.

The foregoing white paper correctly stated the legislative intent, which is not an intent which is affected by market pressures that may occur from time to time. For the reasons set forth above, as well as those further articulated by the DOER RPS White Paper #5 on Eligibility, we believe that an extension of the definition of renewable energy generating sources beyond what is currently provided for within the statutory language for the RPS is contrary to the legislative intent of the Electric Restructuring Act.

2. **The proposed addition of Construction and Demolition Waste Wood as an eligible fuel source for inclusion in the RPS is contrary to the DOER's stated RPS policy objective of encouraging clean technologies.**

The inclusion of C&D wood makes the Massachusetts RPS a vehicle for the burning of biomass materials which produce neither clean nor renewable energy. C&D wood contains elevated levels of heavy metals, including lead and arsenic in sufficient concentration that, as the NOI clearly indicates, Massachusetts landfills are expected to ban the disposal of such waste in the ear future. Inclusion in the RPS is unnecessary to keep existing biomass power plants operating. Clearly the more appropriate choice for the owners of biomass facilities should be whether to burn clean biomass and be included in the Massachusetts RPS as written or to continue to operate a biomass-fired waste-to-energy facility and be excluded from the Massachusetts RPS.

3. **The proposed revisions will undercut the financial credibility of the RPS by shifting eligibility criteria.**

Any changes to the RPS as currently defined will undermine the certainty of the Renewable Energy Certificate (REC) market and runs contrary to the very goals outlined in the NOI by creating uncertainty as to the definition of projects that will qualify as a "new renewable generation unit." The certainty of such a definition involves more than mere project feasibility in that a well established definition allows potential developers to ascertain the value of a market and make investments according to their perceived value.

Furthermore, while we recognize the DOER's efforts to limit certain expansions of the definition as stated in Section 3(b) pertaining to eligible biomass technologies, we contend that such interference (even if for a limit period of time) will further inhibit potential investment into renewable technologies by creating a precedent for government interference with market conditions that serve only to limit the development of the free market.

RECs enable renewable energy projects to monetize the environmental attributes associated with their facilities and offset the higher capital costs associated with renewable energy development. The emergence of RECs as a distinct product offering is an important development for renewable energy projects, but the market is still in the early stages of evolution. Most importantly, financial institutions require long term assurances that RECs will produce predictable revenue streams. The DOER's proposed lessening of the requirements for REC eligibility, at this early juncture, would create uncertainty in the definition of the REC product. Uncertainty in the REC market (including the perception that the DOER may periodically change the market rules in response short-term market pressure) would deter financial institutions and trading parties from making requisite long term commitments for fear that future changes will erode the value of RECs.

I appreciate the opportunity to comment on this issue. We look forward to participating in future proceedings as these issues develop further. If I can provide anything further, please contact me.

Sincerely yours,

/S/

Christopher P. Sherman
Manager – Project Development